

Statement of Chairwoman Sue Kelly
Subcommittee on Oversight and Investigations
“The First Line of Defense: The Role of Financial Institutions in Detecting Financial Crimes”
May 26, 2005

The Bank Secrecy Act (BSA) requires financial institutions across the United States to know their customers and keep track of large cash transactions and suspicious activity.

FinCEN is statutorily responsible for administering the BSA, and through FinCEN power is delegated to eight different agencies for examining financial institutions and determining their compliance with the law.

Through this system, Suspicious Activity Reports (SARS) and Currency Transaction Reports (CTRs) are collected by FinCEN for analysis and distribution to law enforcement and intelligence units.

Unfortunately, the utility and relevance of these reports has come to be doubted by many in the financial services industry and in Congress.

And FinCEN is still seen by many as a “library of data” rather than an active part of our nation’s defense as our Financial Intelligence Unit and an analysis center.

These views must change.

This skepticism about the utility of the BSA process has been reinforced by the pendulum swing response to failures in the BSA system this subcommittee has examined in the past.

There is a widely-held view that front-line regulators now take an unreasonable, overly-aggressive approach with institutions they are examining.

Financial institutions feel pressure from examiners to increase their filing of SARS, and many view this pressure as creating new burdens for institutions without any real sense of the utility of the information being provided to the government.

Institutions have felt pressure to drop MSBs as clients.

Financial institutions feel they have lost their ability to exercise the discretion granted to them in the law of using their best judgment in identifying potentially suspicious transactions.

The compilation of these concerns has led many to believe there must be push-back on the regulators so that they will ease up. And there are valid, critically important points about undue burdens and about the dearth of feedback from the government that must be addressed promptly.

But our focus must not dwell simply on the short-term, on how we might best pull back the reins on the regulators compensating for failures of the past.

We must look more broadly at the system we have in place for ensuring BSA compliance.

We should not focus exclusively on what may be an overreaction to failures of the past, but also on how those failures of the past came to be. Informed by these facts, we can move on towards a better clarity in the future.

Our focus should be on achieving a system that is effective in preventing crime and generating useful intelligence without placing unnecessary, costly burdens on financial institutions and their customers.

It is a difficult balance to strike, but we must continue working toward this ideal.

I hope this hearing today will help illuminate the government's efforts in creating a more effective and coherent regime.